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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte AKIMIRO SHIMADA

Appeal 2009-002281
Application 10/500,572
Technology Center 2800

Oral Hearing Held: August 6, 2009

Before MARC S. HOFF, CARLA M. KRIVAK,
and THOMAS HAHN, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

DIALLO T. CRENSHAW, ESQ.
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The above-entitled matter came on for hearing on Thursday, August 6, 2009, commencing at 1:52 p.m., at the U.S. Board of Patent Appeals and Interferences, Madison Building, 600 Dulany Street, 9th Floor, Alexandria, Virginia, before Jan Jablonsky, Notary Public.

1 JUDGE HOFF: Good afternoon.

2 MR. CRENSHAW: Good afternoon.

3 JUDGE KRIVAK: Good afternoon.

4 JUDGE HOFF: Could we have you state your name for the record
5 please?

6 MR. CRENSHAW: Yes. My name is Diallo Crenshaw.

7 JUDGE HOFF: You will have 20 minutes and you may begin.

8 MR. CRENSHAW: Okay.

9 Good afternoon. And as I stated, my name is Diallo Crenshaw. I'm
10 here on behalf of the Appellants in this case for Application 10/500,572, in
11 which Claims 1 and 2 are finally rejected.

12 As you already know -- I'll just give you a little background -- the
13 claimed invention is directed to a magnetic bearing apparatus. And it can be
14 used for ultra high-speed rotation, which cannot be realized by other
15 apparatus such as a rolling bearing apparatus.

16 In this case, Appellants submit that the applied references, the primary
17 reference Traxler, and the secondary reference, Muszynski -- hope I'm
18 pronouncing that correctly -- do not disclose or suggest a particular feature,
19 that feature being cooling wind producing means for producing cooling wind
20 of a low temperature, using a driving force of a rotary member.

21 Now it is Appellants' contention -- well first of all, the Examiner has
22 applied the Traxler reference and acknowledged that the Traxler reference
23 does not satisfy that particular feature of the "cooling wind producing

1 means," and has applied the secondary reference, Muszynski, to allegedly
2 satisfy that feature.

3 Now it is Appellants' position that Muszynski is, from our
4 understanding of the Examiner's position, the cooling wind producing
5 means.

6 So the Examiner has taken the centrifuge of Traxler and taken a
7 cooling wind producing means, which is the Muszynski reference that says
8 you could combine these to arrive at a magnetic bearing apparatus that
9 comprises several different components, including this secondary reference
10 invention, this blower wheel, which the Examiner believes is the cooling
11 wind producing means of the Muszynski reference.

12 And the reason we have the understanding that the Examiner believes
13 Muszynski is the cooling wind producing means because in one of the off
14 sections, the Examiner specifically cites Blower Wheel 100, which includes
15 a centrally located domain-shaped hub 110, as shown in for example, Figure
16 1 of Muszynski.

17 Now it is Appellants' position that, as you know, Claim 1 recites
18 several different elements, so the Appellants submit that combining
19 Muszynski with Traxler would not arrive at the claimed invention.

20 Combining Muszynski with Traxler would only produce a centrifuge
21 of Traxler that has a separate blower wheel for possibly cooling down the
22 centrifuge of Traxler, and would not arrive at the particular arrangement of
23 the invention of Claim 1.

1 If I may also point out that Claim 1, as I mentioned, comprises
2 different elements, and Claim 1 in particular it comprises, in addition to the
3 cooling wind producing means, it comprises a rotary member. And the
4 particular feature that we are discussing -- the cooling wind producing
5 means, for producing cooling wind of a low temperature -- uses a driving
6 force of the rotary member that also constitutes the magnetic bearing
7 apparatus.

8 So we have different elements that are working together in the
9 claimed invention. And we --

10 JUDGE HOFF: In your view, were one to combine Traxler and
11 Muszynski, where would the combination fall short with respect to the
12 language of the claim?

13 MR. CRENSHAW: It would fall short, because the language of the
14 claim states that the cooling wind producing means for producing cooling
15 wind of a low temperature, uses a driving force of the rotary member. And
16 there is no teaching or suggestion from either of the references that there
17 would be, based on the combination of the applied references, a magnetic
18 bearing apparatus that comprises a rotary member and a cooling wind
19 producing means for producing the cooling wind using a driving force of a
20 rotary member that also constitutes the magnetic bearing apparatus.

21 So it is our contention that just simply applying a blower wheel or,
22 you know, if I may extrapolate, a fan or something that cools, and just taking
23 that separate device with no teaching or suggestion, or even just thinking
24 from a common-sensical approach, how it would be incorporated into a

1 magnetic bearing apparatus, it falls short of satisfying the particular claimed
2 arrangement in Claim 1.

3 JUDGE KRIVAK: So basically you're saying that the cooling wind is
4 not produced in either of these references by the driving force of a rotary
5 member?

6 MR. CRENSHAW: That's exactly right.

7 JUDGE KRIVAK: All right.

8 MR. CRENSHAW: And just to speak generally, you know, outside
9 of --

10 JUDGE HAHN: Excuse me.

11 MR. CRENSHAW: Yes, sir?

12 JUDGE HAHN: On that last point, Judge Krivak said a rotary
13 member, not a magnetic bearing rotary member. You're saying a rotary
14 member, without the limitation of a magnetic bearing?

15 MR. CRENSHAW: Well --

16 (Simultaneous conversation.)

17 MR. CRENSHAW: Well, it is our contention that the specific claim
18 language is not satisfied -- and that includes -- because we were saying that
19 the cooling wind producing means for producing cooling wind of a low
20 temperature, uses a driving force of the rotary member.

21 And when we look at the rotary member limitation, it says, "A rotary
22 member in which a radial magnetic bearing rotor and an actual magnetic
23 bearing disc are secured to a rotary shaft." So that's all encompassed in my
24 response to Judge Krivak --

1 JUDGE HAHN: I understand that it encompasses the magnetic
2 bearing aspect.

3 MR. CRENSHAW: Yes, sir.

4 JUDGE HAHN: Thank you.

5 JUDGE HOFF: But there's no controversy that a rotatable rotary
6 member in which a radial magnetic rotor and an axial magnetic bearing disc
7 are secured to a rotary shaft is taught by Traxler?

8 MR. CRENSHAW: That is not the basis of our argument today. No.

9 JUDGE HOFF: But it is your argument that the combination would
10 not have suggested to one of ordinary skill that the rotary member in
11 Muszynski could have used the driving --

12 JUDGE KRIVAK: No, the cooling --

13 JUDGE HOFF: Yes. That the cooling wind producing means
14 wouldn't use the driving force of the rotary member?

15 MR. CRENSHAW: Yes. There is absolutely no teaching assessed,
16 from what we can tell, and as I mentioned before as an example, there are
17 different means that are out in the art, that could be used for cooling.

18 And to simply take one of those inventions and apply here without
19 any suggestion of how it would be implemented in our claimed apparatus,
20 we contend that, there is no teaching or suggestion to the combined, and
21 even if they were combined, at most it would produce a separate cooling
22 means, because that's all we can extrapolate from --

23 JUDGE HOFF: And you don't agree that this would be the
24 predictable use of known elements, according to their established functions?

1 MR. CRENSHAW: I'm sorry, I didn't hear you?

2 JUDGE HOFF: You don't agree that this corresponds to KSR, that is
3 the predictable use of known elements, according to their established
4 functions?

5 MR. CRENSHAW: Right. And when I think about KSR, in
6 application to this particular case, I think the application of the references to
7 this claim also failed, just thinking common sensically, or based on the
8 particular language from KSR that you just mentioned, I think at most it
9 would produce a blower wheel that would be applied in some manner.

10 But there is no specific idea, even looking at Muszynski in detail, of
11 how it would be applied to satisfy the particular features of the rotary
12 member and the bearings, and everything to satisfy the claimed invention.

13 So to answer your question, applying KSR, I think that the
14 combination still fails to teach or suggest the claimed feature.

15 JUDGE KRIVAK: So where the Examiner relies on column 3 with
16 respect to Figure 3, stating that there's the blower wheel and ventilating air is
17 drawn along between the rotating main blades and directed into a vortex
18 pattern, and a portion of the ventilating air is drawn into a centrally located
19 ventilating air inlet, at the central hub, and a portion of the air is expelled
20 between the rotating main blades, doesn't read on this cooling wind
21 producing means 15 and 16 in your invention?

22 MR. CRENSHAW: No, it does not read on the claim language in the
23 invention ma'am.

24 JUDGE KRIVAK: Okay.

1 MR. CRENSHAW: At most, as I mentioned before, based on the
2 Appellants' commentary as ordinary ones skilled in the art, and based on my
3 review of Muszynski in combination with Traxler, at best it would produce
4 somehow an attachment to Traxler, but it does not read on the -- so that
5 particular commentary of the Examiner or of Figure 3 in Muszynski does not
6 satisfy the very specific claim features.

7 Now I pointed out some of the previously pointed-out arguments with
8 respect to Claim 1 in the appeal brief and in the reply brief.

9 Now just moving forward onto the arguments with respect to
10 dependent Claim 2, the substantive arguments, of course, if Claim 1 is
11 rendered patentable over the references, of course, Appellants submitting
12 that Claim 2 is patentable by virtue of its dependency, because the third
13 reference there was applied, and that third reference to Millman does not
14 make up for what Appellants submit are the deficiencies of Traxler and
15 Muszynski.

16 Now looking at just the combination, the motivation of the Examiner
17 and combining Millman with the other two references, Appellants submit
18 that one of ordinary skill in the art would not have been led to combine
19 Millman, which is directed to a nebulizer device, a medical device, if you
20 will, with either Traxler or Muszynski.

21 Because of very divergent technology areas, in particular some of
22 these arguments we had pointed in the appeal brief and the reply brief,
23 Millman being directed to a sonic nebulizer, when I think just coming from -
24 - I look at things from a point as everyone should now with the KSRP

1 decision, you know, from a common sense approach, or with the different
2 statements that were made in that case, and just looking at this and looking
3 at the nebulizer, it is Appellants' position that this medical device in
4 combination with the vacuum centrifuge of Traxler, it would not have been a
5 motivation combining with that reference or the Muszynski reference that
6 involves a blower, you know, for cooling things off.

7 And the Examiner in the Examiner's Answer, pointed out that it was
8 particularly pertinent to some of the concerns or problems of the Appellants'
9 invention.

10 And we didn't find that to be the case. We found that a concern, as
11 you already know, of the Appellants' invention was cooling off this magnetic
12 bearing device.

13 But differently and very differently from that concern was Millman,
14 which was directed to the accuracy, you know, in showing the accuracy of
15 the medicament that was being produced by the nebulizer.

16 So that was the Examiner's response to our contention that there was
17 no motivation to combine Millman with either of the other applied
18 references, and so that's the Appellant's response to that.

19 And further to that, there still was no response to our particular issue
20 with the combination of Millman with the other references. The Examiner
21 just basically said that Millman was pertinent to the concern or problems
22 that were expressed in the applicant's specification.

23 And that ends my oral portion of these arguments. And for these
24 reasons I stated previously, Appellants submit that Claims 1 and 2 are

1 patently -- over the applied references, and respectfully request your
2 consideration in that regard.

3 JUDGE HOFF: Any further questions?

4 JUDGE KRIVAK: I don't have any further questions.

5 JUDGE HAHN: I have no further questions, thank you.

6 JUDGE HOFF: Thank you for your time.

7 JUDGE KRIVAK: Thank you.

8 (Whereupon, at 2:05, the proceedings were concluded.)